

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
WITEL COMMUNICATIONS GROUP, LLC)
and LEVEL 3 COMMUNICATIONS, LLC)
)
For Approval of an Indirect)
Transfer of Control of WilTel)
Communications, LLC to Level 3)
Communications, LLC)
_____)

DOCKET NO. 05-0275

DECISION AND ORDER NO. 22204

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed December 29, 2005

At 10 o'clock A.M.

Brooke K. Kane
for Chief Clerk of the Commission

ATTEST: A True Copy
BROOKE K. KANE
Administrative Director
Public Utilities Commission
State of Hawaii

Brooke K. Kane

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
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WILTEL COMMUNICATIONS GROUP, LLC)	
and LEVEL 3 COMMUNICATIONS, LLC)	Docket No. 05-0275
)	
For Approval of an Indirect)	Decision and Order No. 22204
Transfer of Control of WilTel)	
Communications, LLC to Level 3)	
Communications, LLC)	
_____)	

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable.

I.

Background

A.

Description of Subject Entities

WilTel Communications, LLC ("WilTel-Comm"), a Delaware limited liability company, is presently authorized to provide resold telecommunications services in the State of

Hawaii.¹ WilTel-Comm is a non-dominant carrier that is authorized to provide intrastate telecommunications services in all fifty (50) states and competitive local exchange telecommunications services in "less than five states."²

WilTel-Comm is wholly owned by WilTel Communications Group, LLC ("WilTel"), a Nevada limited liability company. WilTel, through its subsidiaries, operates and manages a technologically advanced, fully operational, next-generation fiber-optic broadband network that spans approximately 30,000 route-miles connecting 118 cities in the United States and extends to Europe, Mexico, and the Pacific Rim.

Level 3 Communications, LLC ("Level 3"), a Delaware limited liability company, provides voice and data services to carriers, internet service providers, and other business customers over its internet protocol-based network. Level 3 is a wholly owned subsidiary of Level 3 Financing, Inc., which in turn is a wholly owned subsidiary of Level 3 Communications, Inc., a publicly traded company. "Level 3 is a non-dominant carrier that is authorized to provide resold or facilities-based

¹The commission granted WilTel-Comm its Certificate of Authority by Decision and Order No. 17092, filed on July 22, 1999, in Docket No. 99-0052. In Docket No. 99-0052, the commission originally granted the certificate to Williams Communications Inc. Applicants represent that the commission was notified of the change in name from Williams Communications Inc. to WilTel Communications, LLC.

²Verified Application of WilTel Communications Group, LLC and Level 3 Communications, LLC for Waiver of Approval, or Alternatively Approval, of an Indirect Transfer of Control of WilTel Communications Group, LLC, to Level 3 Communications, LLC, filed on October 31, 2005 ("Application"), at 4.

telecommunications services nationwide."³ In addition, the Federal Communications Commission authorized Level 3 to provide international and domestic interstate services as a non-dominant carrier. The commission authorized Level 3 to provide facilities-based and resold intrastate telecommunications services in the State of Hawaii.⁴

B.

Application

On October 31, 2005, WilTel and Level 3 jointly filed their Application seeking a waiver of approval, pursuant to HRS § 269-16.9 and HAR § 6-80-135, or in the alternative, commission approval, pursuant to HRS § 269-7(a), to consummate a transaction whereby Level 3 will acquire indirect control of WilTel-Comm, as described in the Application ("Proposed Transaction").⁵ Pursuant to the Proposed Transaction, Level 3 will acquire a 100 percent equity interest in WilTel, and thus, a 100 percent indirect ownership interest in WilTel-Comm. Applicants state they expect that immediately following the transaction, WilTel, along with WilTel-Comm, will continue to operate as separate subsidiaries of Level 3.

³Application, at 4.

⁴See Decision and Order No. 17053, issued on June 29, 1999, in Docket No. 99-0049.

⁵Level 3 and WilTel are collectively referred to as the "Applicants." On October 31, 2005, the Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate").

Applicants state that the Proposed Transaction "will be seamless and transparent to the consumers in the State of Hawaii, in terms of the services they receive."⁶ Applicants represent that the Proposed Transaction will serve the public interest. They further contend that a waiver of HRS § 269-7(a) is justified because: (1) "all of the telecommunications services provided by WilTel-Comm and Level 3 in Hawaii are competitive;" (2) "both WilTel-Comm and Level 3 are non-dominant carriers in Hawaii;" (3) "the [P]roposed [T]ransaction is consistent with the public interest;" and (4) "competition, in this instance, will serve the same purpose as public interest regulation."⁷ Applicants state that even if the commission does not grant a waiver, the Proposed Transaction will serve the public interest. In support of their assertion, Applicants state that the Proposed Transaction will "provide WilTel access to Level 3's substantial technical and management expertise, financial resources and complementary suite of services, which together are expected to strengthen WilTel's ability to expand its offerings and provide more advanced telecommunications services to a broader customer base in Hawaii."⁸

Applicants request that the commission expedite its examination of the Proposed Transaction so that Applicants can timely consummate the Proposed Transaction by December 31, 2005.

⁶Application, at 6.

⁷Id. at 7.

⁸Id. at 8.

C.

Consumer Advocate's Statement of Position

On November 23, 2005, the Consumer Advocate filed its Statement of Position ("Statement of Position") stating that it does not object to the requested waiver of the HRS § 269-7(a) requirement for commission approval, pursuant to HRS § 269-16.9 and HAR § 6-80-135. If a waiver is granted, the Consumer Advocate recommends a waiver of the filing of certain documents. Alternatively, if the commission is not inclined to waive its "investigative authority over the matter,"⁹ the Consumer Advocate advises that it does not object to the approval of the Proposed Transaction for transfer of control.

II.

Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

HRS § 269-19 provides that no public utility corporation shall "directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the . . . commission an order authorizing it so to do." Emphasis added. HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance,

⁹Statement of Position, at 8.

merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Having reviewed the record,¹⁰ the commission finds and concludes that the Proposed Transaction falls under the purview of HRS §§ 269-7(a) and 269-19. Notwithstanding these regulatory requirements, HRS § 269-16.9 also permits the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

The commission finds that the telecommunications services currently provided by WilTel-Comm are fully competitive, and WilTel-Comm is a non-dominant carrier in Hawaii. The commission also finds that the Proposed Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the applicable requirements of HRS §§ 269-7(a) and 269-19 should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and

¹⁰The commission takes official notice of all commission records relating to WilTel, WilTel-Comm, and Level 3, pursuant to HAR § 6-61-48.

HAR § 6-80-135.¹¹ Similarly, based on these findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Applicants' Application fails to meet any of these filing requirements.

III.

Orders

THE COMMISSION ORDERS:


1. The requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction.

2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are waived.

¹¹The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a) and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a) and 269-19 is based on our review of the Applicants' Application. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a) and 269-19 should not be construed by any public utility, including WilTel, WilTel-Comm, and Level 3, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

DONE at Honolulu, Hawaii December 29, 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

05-0275.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22204 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

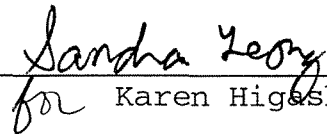
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DATED: December 29, 2005